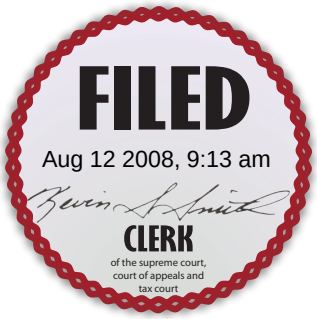

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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.A., C.A., T.A., D.C., D.A., and T.A., MINOR CHILDREN and THEIR FATHER, K.C.,	)	
K.C.,	)	
Appellant,	)	
vs.	)	No. 49A02-0802-JV-102
MARION COUNTY DEPARTMENT OF CHILD SERVICES and CHILD ADVOCATES, INC.,	)	
Appellees.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0701-JT-199

August 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

K.C. ("Father") appeals the termination of his parental rights as to his five children, K.C., C.C., D.A., De.A., and T.A. (collectively, the "Children").

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Father's parental rights.

FACTS

Father and M.A. ("Mother") have five children: K.C., born on October 3, 1991; C.C., born on March 4, 1993; twins, D.A. and De.A., born on September 29, 1999; and T.A., born on February 4, 2001.[1] On April 18, 2006, police officers responded "to a domestic disturbance at the family home" and "found [Mother] and [Father] intoxicated." (Ex. 1).

On April 20, 2006, the Marion County Office of Family and Children (the "OFC") filed a petition, alleging the Children to be in need of services ("CHINS") pursuant to Indiana Code section 31-34-1-1.[2] According to the CHINS petition, "[a]ll of the children

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[1] Mother has another child, Ta.A., born on April 13, 1998. The juvenile court terminated Mother's parental rights, but she is not part of this appeal.

[2] Indiana Code section 31-34-1-1 provides as follows:

> A child is a child in need of services if before the child becomes eighteen (18) years of age:
> (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
> (2) the child needs care, treatment, or rehabilitation that:
> (A) the child is not receiving; and

report that . . . the parents consume alcohol on a daily basis, [and] that there is ongoing domestic violence." *Id.* As to Father, the OFC alleged that he was "not providing the [C]hildren with a safe home environment, free from alcohol abuse" and domestic violence. *Id.*

The juvenile court held an initial hearing on the CHINS petition on April 24, 2006, during which the juvenile court found that several services, including public assistance, food stamps, and housing assistance, were available to the parents prior to the Children's removal. The juvenile court determined the Children to be CHINS.

On May 24, 2006, the juvenile court entered a parental participation decree. The juvenile court ordered Father to do the following: "[n]otify the caseworker of changes in address, household composition or telephone number within five (5) days of said change"; enroll in any ordered program within thirty days of the order and "participate in the program . . . without delay or missed appointments"; complete any required assessment within thirty days; "[c]ontact the caseworker every week to allow the caseworker to monitor compliance with [the juvenile court]'s orders in this case"; [s]ecure and maintain a legal and stable source of income, including public assistance, adequate to support all the household members"; "[o]btain and maintain suitable housing"; "[p]articipate in and successfully complete a home based counseling program with the [C]hildren and successfully complete any recommendation of the counselor"; "[c]omplete parenting assessment . . . and successfully complete all recommendations

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(B) is unlikely to be provided or accepted without the coercive intervention of the court.

developed as a result of the parenting assessment"; [s]uccessfully participate in and complete anger control classes"; and "[p]articipate in a program addressing issues of domestic violence as referred by the case manager." (Ex. 4).

The juvenile court held a review hearing on June 7, 2006, and found that Father had not completed his parenting assessment. The juvenile court further found that "the services offered and available have either not been effective or been completed that would allow the return home of the [C]hildren without Court intervention." (Ex. 5). On October 4, 2006, the juvenile court found that Father had completed a parenting assessment but had not begun substance-abuse counseling.

On January 3, 2007, the OFC filed a petition to terminate the parental rights of Mother and Father. The juvenile court held a hearing on December 17, 2007. Father did not appear at the hearing as he was being held at the Department of Correction's Reception Diagnostic Center. According to Father's counsel, Father was "homeless" prior to his detention. (Tr. 2).

Elizabeth Nelson, a case manager with the OFC, testified that she made referrals on Father's behalf "[o]n a number of occasions," including several referrals for substance abuse and visitation. (Tr. 46). Father, however, had not completed any services toward reunification with the Children and had not followed up with the referrals for services. According to Nelson, Father last contacted her "[s]ix to eight months ago." (Tr. 46).

Nelson also testified that Father had neither stable housing nor employment. She further testified that she would not recommend reunification due to Father's failure to demonstrate "[c]onsistent skills needed for . . . parenting" and "a long history of relapse .

. . .” (Tr. 45). Finally, Nelson testified that she believed it to be in the Children’s best interest to terminate Father’s parental rights because the children “need a sense of permanency . . . .” (Tr. 50).

Greg Huff, the guardian ad litem appointed for the children, did not testify during the hearing. The parties, however, stipulated that if he were to testify, “his testimony would be that it is the recommendation . . . [t]o achieve termination of parental rights so that all of the children can be free to be adopted.” (Tr. 62).

Memorie Bush, the case manager assigned to K.C. and C.C., testified that K.C. and C.C. had been placed in the home of a relative and were doing well in that placement. Nelson testified that she believed the relative was prepared to adopt both K.C. and C.C. Shannon Branic, the case manager assigned to T.A. and Ta.A., testified that they had been placed in a foster home. Branic testified that T.A. had “a huge need for permanency.” (Tr. 34). Branic therefore believed adoption to be in the best interests of T.A. Nelson testified that she believed T.A.’s continued placement in her foster home to be in her best interests because her foster mother “has clearly been supportive in every sense of the word . . .” and was prepared to adopt T.A.[3] (Tr. 43). Finally, Nelson testified that D.A. and De.A.’s foster parents were willing to adopt them.

On December 18, 2007, the juvenile court entered its order, finding, in pertinent part, as follows:

> 8. The children have been removed from the home and custody of their parents for more than six months . . . .

[3] According to Nelson, the foster mother also was prepared to adopt Ta.A.

9. There is reasonable probability that the conditions that resulted in the children's removal from their parents will not be remedied and in support thereof the Court finds the following:

a. The children were originally removed after law enforcement responded to a domestic disturbance at the family residence on or about April 18, 2006. [Mother] and [Father] were intoxicated and the children reported that their parents consume alcohol on a daily basis and that there was ongoing domestic violence. [Mother] and [Father] did not provide the children with a safe home environment, free from alcohol and domestic violence. The family had an extensive history with [the OFC], including prior CHINS cases.

b. The CHINS Court ordered [Mother] and [Father] to participate in certain services. Both parents were ordered to stay in contact with the case manager, participate in supervised visitation, secure and maintain a legal and stable source of income, obtain and maintain suitable housing, participate in home-based counseling, complete a parenting assessment and complete all recommendations that resulted from the parenting assessment, and complete anger control counseling and domestic violence counseling.

* * *

d. [Father] has not participated in any services other than completing the parenting assessment. [Father] did not maintain routine contact with the case manager.

* * *

f. [Father] has a criminal history dating back to 1984, which reflects convictions for criminal conversion in 1995 and a Resisting Law Enforcement in 1995. In 2006 there is an arrest but no conviction for domestic battery. [Father] is presently incarcerated.

g. Neither parent has participated in services to address their substance abuse or anger control issues. Neither parent has maintained contact with the case manager and presented the proof of their ability to provide a safe and stable home for their children. Neither parent has consistently participated in visitation.

h. [Father] is unwilling and unavailable to parent or care for his children. [Father] is presently incarcerated but even when he was not incarcerated, he did not participate in services, maintain contact with the

> case manager or visit with his children. Based on his failure to visit with his children or participate in services even when he had the opportunity, it is unlikely that the reasons for the removal of the children will be remedied.
>
> * * *
>
> 10. Continuation of the parent-child relationship poses a threat to the well being of the children. The children have expressed anxiety and concerns with regard to their future. . . . Continuation of the parent-child relationship will extend the instability in th[e] children's lives, resulting in more uncertainty, anxiety and emotional and psychological harm.
>
> 11. Termination is in the best interests of the children. All six children need permanency and stability in a safe and loving home. [K.C.] and [C.C.] are presently doing well together in pre-adoptive relative care. [Ta.A.] and [T.A.] are doing well together in pre-adoptive foster care. The girls are extremely bonded to their foster mother and all of their emotional and physical needs are being met. [D.A.] and [De.A.] are doing well together in their pre-adoptive foster care. They have been in the same placement for the last two years and are deeply loved by their foster parents. All . . . three foster placements wish to adopt the children they are caring for. The Guardian ad Litem believes that it is in the best interests of the children to terminate the parental rights of [Mother] and [Father] so that the children may be adopted.
>
> 12. There is a satisfactory plan for the care and treatment of the children, specifically, adoption.

(App. 14-16). Accordingly, the juvenile court ordered the termination of Father's parental rights.

DECISION

Father asserts that the trial court erred in terminating his parental rights. Specifically, Father argues that the evidence does not support the juvenile court's finding that the conditions that resulted in the Children being removed from Father's home will not be remedied because the OFC failed to show by clear and convincing evidence that it "referred [him] for services other [than] the parenting assessment." Father's Br. at 5.

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *cert. denied*, 534 U.S. 1161 (2002). When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id*. We consider only the evidence most favorable to the judgment. *Id*. In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Father asserts that the State failed to establish that the conditions resulting in the removal of the Children will not be remedied and that a continuation of his relationship with the Children poses a threat to their well-being. The trial court need only find either that the conditions resulting in a child's removal will not be remedied or that the

continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*.

In determining whether the conditions will not be remedied, the trial court "first should determine what conditions led the State to place the child outside the home and with foster care, and second whether there is a reasonable probability that those conditions will be remedied." *Id*. The juvenile court should judge a parent's fitness to care for the child as of the time of the termination hearing and take into account any evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). "The trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* "A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court also may consider the services offered to the parent and the parent's response to those services. *D.J.*, 755 N.E.2d at 684.

> However, the law concerning termination of parental rights does not require the [OFC] to offer services to the parent to correct the deficiencies in childcare . . . . Rather, while a participation plan serves as a useful tool in assisting parents in meeting their obligations, and while county departments of public welfare routinely offer services to assist parents in regaining custody of their children, termination of parental rights may occur independently of them, as long as the elements of Ind. Code § 31-35-2-4 are proven by clear and convincing evidence. Therefore, a parent may not sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting.

In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2001) (citations omitted).

In this case, the OFC removed the Children from Father's home because there was alcohol abuse and domestic violence. Despite the OFC referring Father to services for substance abuse and visitation "[o]n a number of occasions," Father failed to participate in any services and failed to seek any services. (Tr. 46). To the extent that Father is claiming that the OFC failed to establish that the conditions which resulted in the removal of the Children would not be remedied, the burden was on him to show that, prior to the filing of the termination petition, he sought services from the OFC and was denied. *See Jackson v. Madison County Dept. of Family and Children*, 690 N.E.2d 792, 793 (Ind. Ct. App. 1998).

Furthermore, Father failed to comply with the juvenile court's order to maintain contact with the OFC, obtain suitable housing, and secure employment. Rather, the evidence demonstrates that Father last contacted the OFC "[s]ix to eight months" prior to the termination hearing, was homeless, and failed to appear at the termination hearing because he was incarcerated. (Tr. 46).

There is ample evidence that the conditions resulting in the Children's removal will not be remedied. Accordingly, the juvenile court's finding that the conditions were not likely to be remedied is not clearly erroneous.[4]

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[4] Again, the juvenile court must find that there is a reasonable probability that the conditions, which resulted in the removal of the child, would not be remedied, *or* that the continuation of the parent-child relationship posed a threat to the well-being of the child. I.C. § 31-35-2-4(b)(2)(B) (emphasis added). Because we have found that the evidence supports the juvenile court's findings as to the former, we need not address Father's contention that the OFC failed to prove the latter. *A.N.J.*, 690 N.E.2d at 721 n.2.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.